WP(C) 1802/2007
BEFORE
THE HON’BLE MR. JUSTICE IA ANSARI
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22.11.2007

ORDER (ORAL)

For making, on the basis of lease, settlement of Gangadhar Toll Bridge (Bir Chilarai Dalang) on National Highway 31, under Abhayapuri National Highway D ivision, Abhayapuri, respondent No.2 published Notice Inviting Tender (in short, ’the NIT’), on 03.06.2006, inviting tenders for settlement of the said bridge f or the period from 01.07.2006 to 31.03.2007. Acting upon this NIT, which is here inafter referred to as the first NIT, many persons offered their bids. The respo ndents, however, cancelled the first NIT and issued a fresh NIT, dated 10.01.200 7, for settlement of the said bridge for the period from 01.04.2007 to 31.03.200 8. Though, acting upon the NIT, dated 10.01.2007, which is hereinafter referred to as the second NIT, many persons including the present three writ petitioners had participated, the respondents decided, on 29.03.2007, to issue, once again, fresh tender by deleting Clause 8 (d) of the second NIT. Acting upon the decisio n, so taken, yet another NIT, dated 05.04.2007, which is hereinafter referred to as the third NIT, was published by the respondents inviting tenders for settlem ent of the said bridge with effect from 01.05.2007 to 31.08.2008. It is this NIT , which stands impugned in this writ petition made under Article 226 of the Cons titution of India, whereby the petitioners have sought to get set aside and quas hed the third NIT, the case of the petitioners being, in brief, that the cancell ation of the second NIT was arbitrary and mala fide inasmuch as the respondents, by cancelling the NITs, were trying to accommodate and grant settlement in favo ur of their chosen person.

The respondents have seriously disputed the accusation of arbitrariness and mala fide, the case of the respondents being, in brief, that in terms of Clause 8 (d) of the NIT, an intending tenderer was required to submit liquid asset/credit f acility from Nationalized Bank against the work for an amount not less than 40% of the reserved price; whereas, the respondents/authorities concerned, at the ti me of evaluating the Tender Committee’s report, realized that this clause was no t relevant and necessary inasmuch as lease to be granted, in terms of the second NIT, was not a construction work, but a mere lease. It was for this reason, acc ording to the respondents, that the respondents had decided to invite fresh tend ers by deleting the requirement of Clause 8(d) aforementioned.

Heard Mr. SC Biswas, learned counsel, for the petitioners, and Mr. PN Goswami, l earned counsel, appearing for the respondents.

While considering the present writ petition, what needs to be noted is that the records of the proceeding of the Committee, which took the decision, on 29.03.20 07, not to go ahead with the second NIT has been produced before this Court. The minutes of the said meeting do not, admittedly, assign reasons for taking decis ion to cancel the second NIT and invite the third NIT. Though it is within the d omain of the respondents to cancel an NIT or to publish fresh NIT, no Government Department or public authority can take such a decision arbitrarily. When no re ason has been assigned in the decision, which was taken, on 29.03.2007, and no d ecision is also discernible from the materials on record as existed on 29.03.200 7, the decision, so taken, has to be treated as arbitrary. The reason for taking a decision must exist or to be reflected before the decision is taken or the or der is passed. It is not permissible to supply or supplement reasons after the d ecision is taken. In the present case, the respondents have assigned reasons, fo r the first time, when they filed affidavit in this writ petition. Situated thus

, it is clear that showing of reasons in the affidavit for a decision, which was taken on 29.03.2007, without assigning any reason, cannot sustain the decision, dated 29.03.2007. At the same time, it also needs to be observed that the respondents have, for any good and valid reason, the power to cancel an NIT.

Because of what have been discussed and pointed out above, it is clear that the cancellation of the second NIT cannot be sustained. Because of the conclusion, so reached, the decision, taken on 29.03.2007, to publish the third NIT, is hereby set aside and in consequence thereof, the third NIT, dated 05.04.2007, shall also stand set aside. The respondents shall, however, remain at liberty to act or not to act upon the second NIT in accordance with law. It is further made clear that the fact that the decision, dated 29.03.2007, has been set aside, it shall not debar the respondents from cancelling the second NIT for such reasons as may be sustainable in law.

With the above observations and directions, this writ petition shall stand disposed of.

No order as to costs.